

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6605 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRAKUMAR BHANUSHANKER TRIVEDI

VERSUS

EXECUTIVE ENGINEER (IRRIGATION), DIST.PANCHAYAT & ANR

Appearance:

None present for the petitioner
MS MAMTA VYAS for the respondents

Coram: S.K. Keshote,J

Date of decision:04/05/1998

C.A.V. JUDGMENT

Perused the Special Civil Application,

affidavit-in-reply and heard the learned counsel for the respondents.

2. Twofold prayers have been made by the petitioner, an employee of the District Panchayat, Surendranagar, in this Special Civil Application. First prayer has been made for quashing and setting aside the order of respondents under which he was ordered to be placed under suspension and for reinstatement of the petitioner in service with full backwages and for payment of arrears. Second prayer has been made for restraining the respondents, their agents, servants, or nominees from deducting any amount from the petitioner's Dearness Allowance or any allowance payable to him towards the subsistence allowance.

3. From the order of this Court dated 8th April 1986, it is clear that the petitioner has given up his challenge to the order under which he was ordered to be placed under suspension by the respondents. The challenge was restrained only for the order under which Rs.100/- p.m. were ordered to be deducted from the subsistence allowance payable to the petitioner.

4. The facts of the case in brief are that in pursuance of the FIR dated 26th June 1984, registered against the petitioner, the respondents placed him under suspension. The charges against the petitioner in the said FIR related to misappropriation of the amount of District Panchayat to the tune of Rs.30,401=93. The respondents passed further order to recover this amount by deducting Rs.100/- p.m. from the subsistence allowance to be paid to the petitioner.

5. The petitioner, as stated earlier, challenged both the orders of the respondents, i.e. the order under which he was placed under suspension and the order under which Rs.100/- were ordered to be deducted from the subsistence allowance to be paid to him, in this Special Civil Application. It further comes out from the proceedings of this case that the amount which was to be recovered from the petitioner had been already recovered. The substantial grievance which has been made by the petitioner in this Special Civil Application, in view of the aforesaid fact, now no more survive. The learned counsel for the petitioner is not present nor the petitioner has brought on record of this Special Civil Application, which has been filed in the year 1986, what ultimately has resulted in the criminal case. There are three possibilities, namely, (i) the petitioner would have been acquitted in the said criminal case, (ii) the

petitioner would have been convicted in the said criminal case and (iii) the case would have been pending. So far as the last eventuality is concerned, it is suffice to say that if the criminal case is pending, the suspension of the petitioner continues and when the amount is already recovered, no relief is required to be given to the petitioner at this stage. In the case of acquittal of the petitioner, the authorities would have passed appropriate orders for suspension period and in case in respect of Rs.30,000/- and odd amount, no order is passed, the petitioner can still make a representation in this respect and the same shall be considered by respondents in accordance with law. In the case of conviction, certainly, the petitioner cannot make any grievance against the action of respondents to recover the amount of Rs.30,000/- and odd from him.

6. So, the interest of justice will be met in case this Special Civil Application is disposed of in terms that in case the petitioner has any legal grievance against the action of the respondents to recover from him Rs.30,000/- and odd amount, he may make a representation to the respondent-District Panchayat, Surendranagar, and if such representation is made by petitioner within two months from the date of receipt of copy of this order, the same may be decided by respondent-Panchayat within three months by passing a reasoned order and a copy of the same may be sent to the petitioner by registered post A.D. The Special Civil Application and Rule stands disposed of in aforesaid terms with no order as to costs.

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(sunil)